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Patent Application
Attorney Docket No. D/990171

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor(s): Ken Hayward et al.
Application No.: 09/662,284
Filed: September 14, 2000
Examiner: M. Fadok
Art Unit: 3625
Title: METHOD FOR SUPPLY ORDERING

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APPEAL BRIEF

With reference to the Final Action mailed August 16, 2002,
Appellants are transmitting via facsimile an Appeal Brief. A Notice of Appeal
was timely filed on November 12, 2002.

Please charge the fee for filing of the Appeal Brief to Xerox
Corporation, Deposit Account No. 24-0025.

This appeal due on Sunday, January 12, 2003 is being transmitted
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PAGES TO FOLLOW (INCLUDING COVER SHEET): 27

Appeal Brief Letter (2 pages)

U.S. Application No. 09/662,284/Appeal Brief (24 pages)

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In the event the Examiner considers personal contact advantageous to the disposition of this case, he is requested to call Applicants attorney, Andrew D. Ryan, at telephone number (585) 422-8085, Rochester, New York.

Respectfully submitted,



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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Ken Hayward, et al.

Application No.: 09/662,284

Examiner: M. Fadok

Filed: September 14, 2000

Group Art Unit: 3625

Title: Method for Supply Ordering

APPELLANTS BRIEF ON APPEAL

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1. **REAL PARTY OF INTEREST**

Xerox Corporation, assignee of the present patent application.

2. **RELATED APPEALS AND INTERFERENCES**

A related appeal of U.S. Application No. 09/662,198, titled: Supply Ordering Apparatus is pending.

3. **STATUS OF CLAIMS:**

Claims 1-21 are the subject of this appeal. No other claims are pending.

4. **STATUS OF AMENDMENTS:**

A final rejection from the PTO was mailed on August 16, 2002. No amendment was filed after the final rejection. All claim amendments have been entered.

5. **SUMMARY OF INVENTION:**

Appellants invention in various embodiments is directed to a method for ordering a part for an apparatus including monitoring electronically a condition of a replaceable part in a first device; electronically sending a signal to a second device to automatically electronically offer to purchase a replaceable part upon identification of the condition in the replaceable part; and sending a digital electronic signature associated with the offering to purchase the replaceable part. The digital electronic signature provides authentication and security to the electronic offer. More specifically, referring to Figures 2 through 8, and for example, pages 4-16 of Appellants application there are described features of the various embodiments.

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6. ISSUES:

1. Claims 1-9, 12 and 21 are rejected under 35 U.S.C. 102(e) as being unpatentable over Kageyama (6,333,790).

2. Claims 10, 11 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kageyama ('790) in view of Brown (5,445,295).

3. Claims 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kageyama ('790) in view of Venkatraman et al. (6,170,007).

4. Claims 13, 17, 18, 19, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kageyama ('790) in view of M2 Presswire.

7. GROUPING OF CLAIMS:

The claims are classified into the following groups for purposes of convenience, and in this regard the claims do not stand or fall together, and moreover, each of the claims in each of the groups are to be specifically separately considered by the Board of Patent Appeals and Interferences (Board).

Group I	Claims 1-13, and 21
Group II	Claim 14
Group III	Claims 15-16
Group IV	Claim 17-20

8. ARGUMENT:

With respect to the 35 U.S.C. 102(e) rejection, for such a rejection to be sustainable, each and every feature of the invention as claimed must be disclosed in the reference, and the Examiner has failed to accomplish this as Kageyama (6,333,790) fails to disclose sending a digital electronic signature associated with the offering to purchase the replaceable part.

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Accordingly, the Examiner has pointed to no disclosure in Kageyama with respect to the use of a digital electronic signature associated with the offering to purchase the replaceable part, see for example independent Claim 1 on appeal. Accordingly, this rejection should be withdrawn by the Examiner, and in any event, it is respectfully urged that the Board not sustain this rejection since it is established in a number of CAFC decisions that a rejection under 35 U.S.C. 102 must disclose each and every feature of the invention as claimed.

With regard to the 103 rejections, it is not believed that the Examiner has established a prima facie case of obviousness, nor has the Examiner applied the rules of Graham v. Deere, 383 US1, 17, 148 USPQ 459, 467 (1966). Moreover, for the 35 U.S.C. 103 obviousness combination rejection, it is also believed that such a rejection is not sustainable, particularly since the Examiner appears to be utilizing a hindsight analysis approach, and moreover, is selecting various pieces of the secondary prior art without providing evidence that one of ordinary skill in the art would be motivated to combine the references as suggested. As stated in a number of CAFC decisions, the Examiner must provide evidence that one of ordinary skill in the art would be motivated to combine the references as suggested without utilizing the benefits of the teachings of the present application, reference for example, In re Jones, 21 USPQ 2d 1941 (CAFC 1992).

Referring now to the Examiner's rejections, they are not sustainable as the Examiner has not established a prima facie case of obviousness. The Examiner has pointed to no disclosure, suggestion, motivation or teaching in the '790 patent, the '295 patent, and the M2 Presswire reference wherein there is provided a method of ordering a part for a apparatus including the combination of: monitoring electronically a condition of a replaceable part in a first device, the replaceable part having: a first condition upon installation; at least one intermediate condition after use; and a third condition when a replacement part is substantially necessary;

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electronically sending a signal to a second device, the signal automatically electronically offering to purchase a replaceable part upon identification of at least one of the first condition, second condition, and third condition in the replaceable part; and sending a digital electronic signature associated with the offering to purchase the replaceable part, as a whole, as recited in independent claim 1. Claims 2-13 and 21 depend from independent claim 1 and are allowable for the same reason and on their own merits as they recite other features neither taught nor suggested by the applied references.

In addition, the Examiner has pointed to no disclosure, suggestion, motivation or teaching in the '790 patent and the '295 patent wherein there is provided a method of ordering a part for an apparatus including the combination of: identifying electronically a condition in an apparatus; automatically launching an electronic communications to initiate at least one of an inquiry and an offer to purchase to a supplier based on the condition; displaying a purchase order screen including a part number for a part automatically filled out on the purchase order screen based on the identified condition; sending an electronic purchase order for the part; and sending a digital electronic signature associated with the purchase order for the part, as a whole, as recited in independent claim 14.

Furthermore, the Examiner has pointed to no disclosure, suggestion, motivation or teaching in the '790 patent and the '007 patent wherein there is provided a method of ordering a part for an apparatus including the combination of: sensing a condition at a consumable part in the marking device, the marking device adapted to predict a code indicative of a threshold of a consumable; launching an electronic communication to access a computer at an address defined by the condition; sending an electronic purchase offer for a replacement for the consumable part to the electronic address defined by the condition; and sending a digital electronic signature associated with the purchase offer, as a whole, as recited in independent

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claim 15. Claim 16 depends from independent claim 15 and is allowable for the same reason and on its own merit as it recited other features neither taught nor suggested by the applied references.

Moreover, the Examiner has pointed to no disclosure, suggestion, motivation or teaching in the '790 patent and the M2 Presswire references wherein there is provided a method of ordering a part for an imaging apparatus including the combination of: identifying electronically a condition in a consumable part, the consumable part including at least one an ink cartridge, toner cartridge, photoreceptor cartridge, paper, and printhead, the consumable part having a first condition upon installation, at least one intermediate condition after use, and a third condition when a replacement of the consumable part is substantially necessary; and using a software and sensor system associated with the apparatus for at least one of: (a) electronic monitoring of the condition of the consumable part; (b) electronic predicting of the condition of the consumable part; and after at least one of (a) and (b); (c) automatically launching an electronic communications to initiate at least one of an inquiry and an offer to purchase a replacement for the consumable part at an occurrence or prediction of at least one of the first condition, intermediate condition, and third condition; sending a purchase offer for a replacement for the consumable part to a URL address defined by the identified condition in the consumable part; and sending a digital electronic signature associated with the purchase offer, as a whole, as recited in independent claim 17. Claims 18-20 depend from independent claim 17 and are allowable for the same reason and on their its own merit as the recite other features neither taught nor suggested by the applied references.

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The four issues are further discussed below:

1. The Examiner's rejection of Claims 1-9, 12 and 21 under 35 U.S.C. 102(e) as being unpatentable over Kageyama (6,333,790) is respectfully traversed.

The distinction between the invention and Kageyama (6,333,790) may be briefly summarized as follows:

Kageyama (6,333,790) relates to a printing system which includes a network, a first computer connected to the network, a second computer connected to the network, and a printer connected to the network. The first computer instructs the printer to print. The printer includes a printer controller and a printer engine. The printer controller includes an individual printer management part for managing the printer, and an individual printer information DB part. The second computer includes a total printer management service processing part for managing a plurality of printers including the printer connected to the network, and a total printer management information DB part. The second computer communicates with the printer controller and/or the first computer over the network to manage the printer to cope with trouble in the printer, order consumable items and replacement parts for the printer, and update programs and data for using the printer.

For independent claim 1, the Examiner asserts that Kageyama discloses sending a digital electronic signature associated with the offering to purchase the replaceable part (col. 2, lines 9-67).

Appellants respectfully traverse the Examiners rejections as no where does Kageyama teach or suggest use of a digital electronic signature associated with the offering to purchase the replaceable part. Furthermore, the Examiner appears to be asserting personal knowledge and conclusionary hindsight analysis without providing any particular factual evidence. There is clearly no teaching or suggestion of an apparatus in Kageyama using a digital electronic signature as part of an offer as claimed in independent claim 1.

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Claims 2-9, 12 and 21 depend directly or indirectly from independent claim 1 and are allowable for the same reason and on their own merits as they recite other features neither taught nor suggested by Kageyama.

Furthermore, for dependent claim 21, the Examiner asserts Kageyama teaches a wireless communication. Appellants respectfully traverse the Examiners rejection as Kageyama does not teach or suggest wireless communication.

Withdrawal of the 35 U.S.C. 102(e) rejection is respectfully requested.

2. The Examiner's rejection of Claims 10, 11, and 14 under 35 U.S.C. 103(a) as being unpatentable over Kageyama ('790) in view of Brown (5,445,295) is respectfully traversed.

The distinction between the invention and Kageyama ('790) and Brown (5,445,295) may be briefly summarized as follows:

Similar comments as presented hereinbefore with respect to Kageyama ('790) are applicable and will not be repeated, and are incorporated herein by reference as part of the Appeal Brief.

Brown (5,445,295) relates to an unattended vending machine for the sale of articles such as compact audio cassette tapes, video cassette tapes, electromagnetic or electro-optical storage devices, or any other device capable of storing recorded information for subsequent reproduction by a patron. The machine displays the various disks or cassettes available, for customer purchase, and is also capable of playing extracts or complete sections of audio or audio-visual entertainment from the available disks or tapes on a video screen or audio speaker. Communications capability is available for transmitting pricing, accounting, and alarms, and for verifying credit cards, and a centralized automatic-ordering system permits reduced

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human intervention, and the maintenance of high levels of sales with a minimum inventory.

For independent claim 14, the Examiner asserts that Kageyama discloses sending a digital electronic signature associated with the purchase order for the part (see response to claim 1 and 10).

Appellants respectfully traverse the Examiners rejection of independent claim 14 as, for example, Kageyama and Brown do not teach or suggest sending of a digital electronic signature associated with the purchase order.

Appellants respectfully traverse the Examiners rejection of claims 10 and 11 as, for example, Kageyama and Brown clearly do not teach or suggest sending of a digital electronic signature associated with the purchase order as claimed in independent claim 1. Claims 10 and 11 are also allowable on their own merits as they recite other features neither taught nor suggested by Kageyama and Brown.

Withdrawal of the 35 U.S.C. 103(a) rejection is respectfully requested.

3. The Examiner's rejection of Claims 15 and 16 under 35 U.S.C. 103(a) as being unpatentable over Kageyama ('790) in view of Venkatraman ('007) is respectfully traversed.

The distinction between the invention and Kageyama ('790) and Venkatraman ('007) may be briefly summarized as follows:

Similar comments as presented hereinbefore with respect to Kageyama ('790) are applicable and will not be repeated, and are incorporated herein by reference as part of the Appeal Brief.

Venkatraman (6,170,007) relates to web access functionality embedded in a device to enable low cost widely accessible and enhanced user interface functions for the device. A web server in the device provides

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access to the user interface functions for the device through a device web page. A network interface in the device enables access to the web page by a web browser such that a user of the web browser accesses the user interface functions for the device through the web page.

For independent claim 15, the Examiner asserts that Kageyama discloses a method of ordering including sending a digital electronic signature associated with the purchase offer.

Appellants respectfully traverse the Examiner's rejection of claim 15 as, for example, Kageyama and Venkatraman clearly do not teach or suggest use of sending a digital electronic signature associated with a purchase offer.

Withdrawal of the 35 U.S.C.(a) rejection is respectfully requested.

4. The Examiner's rejection of Claims 13, 17, 18, 19, and 20 under 35 U.S.C. 103(a) as being unpatentable over Kageyama ('790) in view of M2 Presswire is respectfully traversed.

The distinction between the invention and Kageyama ('790) and M2 Presswire may be briefly summarized as follows:

Similar comments as presented hereinbefore with respect to Kageyama ('790) are applicable and will not be repeated, and are incorporated herein by reference as part of the Appeal Brief.

M2 Presswire relates to a printer management application in a mixed printer environment.

For independent claim 17, the Examiner asserts that Kageyama discloses a method of ordering including sending a digital electronic signature associated with the purchase offer.

Appellants respectfully traverse the Examiners rejection of claim 17 as, for example, Kageyama and M2 Presswire clearly do not teach or

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suggest use of sending a digital electronic signature associated with a purchase offer.

Claim 13 depends from independent claim 1 and is allowable for the reason that Kageyama and M2 Presswire do not teach or suggest sending a digital electronic signature and on its own merit as it recites features neither taught nor suggested by Kageyama and M2 Presswire.

Claims 18-20 depend from independent claim 17 and are allowable for the same reason and on their own merits as they respectively recite other features neither taught nor suggested by Kageyama and M2 Presswire.

Withdrawal of the 35 U.S.C. 103(a) rejection is respectfully requested.

In summary, Appellants respectfully submit that there is provided in the claims 1-21 improved methods for ordering a part using digital and electronic signatures as part of the offer, all of which as claimed, as a whole, are not disclosed or suggested in the '790, '007, '295 patents and M2 Presswire reference.

Accordingly, the Examiner has not established anticipation or a prima facie case of obviousness for the reasons as indicated herein, and as a review of the entire teachings of the '790, '007, '295 patents and M2 Presswire readily reveals. The Examiner is utilizing an obvious to try approach and hindsight analysis approach, which is not permitted for these types of rejections. In this regard, the Board is referred to the following decisions which support Appellants' positions.

The U.S. Patent and Trademark Office (PTO) is not permitted to use an obvious to try approach or a hindsight analysis approach, particularly after the present application has been reviewed, and then lift particular portions of the references for the purpose of reaching a foregone conclusion

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in order to arrive at the present invention. This is clearly not permitted as indicated in a number of decisions including, for example, Lindemann v. American Hoist, 221 USPQ 481 (CAFC 1984), which indicates that the references must be considered as a whole and suggest the desirability and thus the obviousness of making the combination, and the references must be viewed without the benefit of hindsight vision afforded by the claimed invention, and also see W.L. Gore and Associates v. Garlock, 220 USPQ 303 (CAFC 1983). Also, the Board is referred to Jones v. Hardy, 220 USPQ 1021 (CAFC 1984), which indicates that although the differences between the claimed invention and the prior art may seem slight, such differences may also have been the key to advancement of the art, and that ought to be tried is not the standard with which obviousness is determined. These types of decisions clearly send a message that, for example, the PTO cannot utilize a subjective approach in analyzing the prior art and applying that prior art as is being advanced in the present situation. Also, the Board is referred to In re Geiger, 2 USPQ 2d 1277 (CAFC 1987), which held that obviousness cannot be established by combining the teachings of the prior art to produce the invention absent some teaching or suggestion or incentive supporting the combination; thus, although it may have been obvious to try various combinations to obtain the claimed invention, this is not sufficient. Moreover, this argument and position applies to all the Examiner's rejections.

Since hindsight analysis is not permitted, the rejections cannot stand and must be reversed. In summary, it is not believed that the invention of the present application is obvious therefrom, the combination rejections fail since the Examiner's rejection with the references is not believed to be sustainable. The Examiner must provide more than mere comments. The Examiner must provide evidence as to why one of ordinary skill in the art would be motivated to combine the teachings of the '790 patent with the '007,

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and the '295 patents and the M2 Presswire reference, and this, in Appellants' view, has not been accomplished.

Where, for example, in the Kageyama '790 patent is there evidence of a disclosure or a suggestion for:

electronically sending a signal to a second device, the signal automatically electronically offering to purchase a replaceable part upon identification of at least one of the first condition, second condition, and third condition in the replaceable part; and sending a digital electronic signature associated with the offering to purchase the replaceable part as recited in independent claim 1?

Where, for example, in the Kageyama '790 patent and Brown '295 patent is there evidence of a disclosure or a suggestion for:

displaying a purchase order screen including a part number for a part automatically filled out on the purchase order screen based on the identified condition; sending an electronic purchase order for the part; and sending a digital electronic signature associated with the purchase order for the part as recited in independent claim 14?

Where, for example, in the Kageyama '790 patent and Venkatraman '007 patent is there evidence of a disclosure or a suggestion for:

sending an electronic purchase offer for a replacement for the consumable part to the electronic address defined by the condition; and sending a digital electronic signature associated with the purchase offer as recited in independent claim 15?

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Where, for example, in the Kageyama '790 patent and M2 Presswire reference is there evidence of a disclosure or a suggestion for:

sending a purchase offer for a replacement for the consumable part to a URL address defined by the identified condition in the consumable part; and sending a digital electronic signature associated with the purchase offer as recited in independent claim 17?

Mere comments by the Examiner do not support a rejection, and in the present application the Examiner is simply taking portions of the claims and trying to find pieces of these claims in various patents while not reviewing the entire claim, as a whole, and not providing factual evidence and/or evidence the references are combinable. The Examiner has not shown an objective teaching in the prior art or an objective teaching in knowledge generally available to one of ordinary skill in the art that would lead to combine the relevant teachings of the references.

Appellants respectfully submit that the assertions by the Examiner are not adequate reasons to negate patentability and clearly do not adequately address the issues of teachings or suggestions for the limitations of the pending claims, as a whole, or the motivation to combine references, all of which cannot be resolved on subjective belief and hindsight.

Furthermore, the invention does not simply reside in individual elements, rather the present invention includes limitations that have meaning, as a whole, as recited in the independent claims 1, 14, 15, and 17 and their respective dependant claims, and the Examiner has not established anticipation or a prima facie case of obviousness with respect to these entire independent claims or their respective dependent claims.

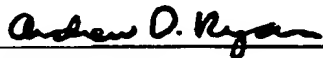
The pending claims have been provisionally rejected over United States Application No. 09/397,126. Appellants request abeyance of the

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provisional double patenting rejection until after allowed claims are determined in the applications upon which the appropriateness of a filing of a terminal disclaimer may be considered.

Accordingly, it is respectfully urged that the Board carefully consider the claims in their entirety on appeal, the references in their entirety, that the Examiner has not established a prima facie case of obviousness, and that the references are clearly not properly combinable as the Examiner has not provided evidence to establish that one of ordinary skill in the art would be motivated to combine the references, and not sustain any of the Examiner's positions. Thus, the Board is respectfully urged to reverse the Examiner's rejection of these claims and to allow this application.

Respectfully submitted,



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January 13, 2003

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Date: January 13, 2003

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9. APPENDIX:

CLAIMS APPEALED:

The following are the appealed claims:

1. A method of ordering a part for a apparatus comprising:
monitoring electronically a condition of a replaceable part in a first device, the replaceable part having: a first condition upon installation; at least one intermediate condition after use; and a third condition when a replacement part is substantially necessary;
electronically sending a signal to a second device, the signal automatically electronically offering to purchase a replaceable part upon identification of at least one of the first condition, second condition, and third condition in the replaceable part; and
sending a digital electronic signature associated with the offering to purchase the replaceable part.
2. The method of claim 1 further comprising predicting a condition of the part prior to the electronically sending the signal.
3. The method of claim 2 further comprising receiving electronically an acceptance of the offer to purchase the replaceable part.
4. The method of claim 3 further comprising installing the replaceable part prior to occurrence of the third condition.

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5. The method of **claim 3** further comprising delivering the replaceable part to the first device when monitoring indicates the condition of the part is between about the first condition and the third condition.

6. The method of **claim 3** further comprising providing information relating to the signal to at least one of a user, a supplier, and a third party.

7. The method of **claim 6** wherein the information relates to at least one of: (1) a present condition of the part; (2) a prediction of a future condition of the part; (3) an inquiry; and (4) an offer to purchase.

8. The method of **claim 1** further comprising:
using a sensor and software system to perform monitoring and predicting of a condition of the part.

9. The method of **claim 1** wherein at least one of the first device and the second device are interactive.

10. The method of **claim 1** further comprising:
displaying a purchase order screen including data relating to the part automatically filled out on the purchase order screen based on an identified condition; and

sending the data electronically to a supplier of the part after personal information data is automatically entered by an application program into the purchase order screen.

11. The method of **claim 10** further comprising:
sending data to the supplier after a user enters data.

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12. The method of **claim 6** wherein the information further relates to at least one of: (1) present supply of a consumable; (2) wear of a consumable; (3) usage of the part; (4) rate of depletion of a consumable; (5) rate of wear of the consumable; (5) predicted date of depletion of the consumable; (5) a predicted date of need of a consumable; (6) delivery schedule of a consumable; and (5) statistical data relating to a part.

13. The method of **claim 1** further comprising:
launching a communications link to access a URL address, the URL address defined by a condition of the part.

14. A method of ordering a part for an apparatus comprising:
identifying electronically a condition in an apparatus;
automatically launching an electronic communications to initiate at least one of an inquiry and an offer to purchase to a supplier based on the condition;
displaying a purchase order screen including a part number for a part automatically filled out on the purchase order screen based on the identified condition;
sending an electronic purchase order for the part; and
sending a digital electronic signature associated with the purchase order for the part.

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15. A method of ordering a part for a marking device comprising:

sensing a condition at a consumable part in the marking device, the marking device adapted to predict a code indicative of a threshold of a consumable;

launching an electronic communication to access a computer at an address defined by the condition;

sending an electronic purchase offer for a replacement for the consumable part to the electronic address defined by the condition; and

sending a digital electronic signature associated with the purchase offer.

16. The method of ordering a part of **claim 15** wherein the consumable part is functionally associated with a sensor and software system to sense and predict a condition in the device and to electronically communicate information, the sensor and software system including logic adapted to initiate a purchase order defined by the condition.

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17. A method of ordering a part for an imaging apparatus comprising:

identifying electronically a condition in a consumable part, the consumable part including at least one an ink cartridge, toner cartridge, photoreceptor cartridge, paper, and printhead, the consumable part having a first condition upon installation, at least one intermediate condition after use, and a third condition when a replacement of the consumable part is substantially necessary; and

using a software and sensor system associated with the apparatus for at least one of: (a) electronic monitoring of the condition of the consumable part; (b) electronic predicting of the condition of the consumable part; and after at least one of (a) and (b); (c) automatically launching an electronic communications to initiate at least one of an inquiry and an offer to purchase a replacement for the consumable part at an occurrence or prediction of at least one of the first condition, intermediate condition, and third condition;

sending a purchase offer for a replacement for the consumable part to a URL address defined by the identified condition in the consumable part; and

sending a digital electronic signature associated with the purchase offer.

18. The method of ordering a part of claim 17 further comprising receiving electronically an acceptance of the offer to purchase.

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19. The method of ordering a part of **claim 17** wherein the communication further relates to at least one of: (1) present supply of a consumable; (2) wear of a consumable; (3) usage of the part; (4) rate of depletion of a consumable; (5) rate of wear of the consumable; (5) predicted date of depletion of the consumable; (5) a predicted date of need of a consumable; (6) delivery schedule of a consumable; and (5) statistical data relating to a part.

20. The method of ordering a part of **claim 17** further comprising:

launching a communications link to access a URL address, the URL address defined by a condition of the consumable part.

21. The method of ordering a part of **claim 1** wherein the electronically sending of the signal to the second device is a wireless communication.